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APPLIED MATERIALS, INC.
2881 SCOTT BLVD. M/S 2061
SANTA CLARA, CA 95050

SEP 10 2004

In re Application of
Chen et al.
Application No. 08/856,116
Filed: May 14, 1997
Attorney Docket No. AMAT/1931

DECISION ON PETITION

This is a decision on the petition filed May 24, 2004, requesting that the holding of abandonment in the above-identified application be withdrawn. This petition, bearing a certificate of mailing dated January 22, 2004, was originally received on January 26, 2004. A copy of the postcard receipt showing receipt of the petition in the Patent and Trademark Office on January 26, 2004 is provided.

The petition to withdraw the holding of abandonment is **GRANTED**.

A decision by the Board of Patent Appeals and Interferences (Board) was mailed on August 29, 2003. The application was held abandoned because the time period for seeking court review by the Court of Appeals for the Federal Circuit or the U.S. District Court for the District of Columbia had expired and there were no allowed claims. The Notice of Abandonment was mailed December 22, 2003.

Petitioner asserts that a Request for Rehearing was timely deposited with U.S. Postal Service on October 29, 2003. To support this assertion, petitioner states that he has a copy of the return postcard, indicating that the Patent and Trademark Office received the Request for Rehearing.

A review of the application file record reveals that the Request for Rehearing is in the file and was received on November 3, 2003. The Request for Rehearing, bearing a certificate of mailing dated October 29, 2003, was timely filed.

37 CFR § 1.304(a)(1) sets forth the time for appeal or civil action and is reproduced below.


The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and

Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.197(b) or § 1.658(b), the time for filing an appeal or commencing a civil action shall expire two months after action on the request. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.979(a), the time for filing an appeal shall expire two months after action on the last such request.

The abandonment of the application was premature. The request for rehearing of the decision by the Board delays the time for seeking court review until after a decision on the request for rehearing is made. The application was not abandoned in fact.

For the above reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn. Inconvenience to petitioner is regretted.

The application file is being forwarded to the Board for processing the Request for Rehearing.



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